

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

EMG TECHNOLOGY, LLC,

Plaintiff,

v.

MICROSOFT CORPORATION, *et al.*,

Defendants.

Case No. 6:09-cv-367-LED

JURY TRIAL DEMANDED

**PLAINTIFF EMG TECHNOLOGY, LLC'S
ANSWER TO DEFENDANT ZAGAT SURVEY, LLC'S
AMENDED ANSWER AND COUNTERCLAIMS**

Plaintiff EMG Technology, LLC ("EMG") hereby responds as follows to the Amended Answer and Counterclaims of Defendant Zagat Survey, LLC ("Zagat") (Docket No. 252) asserted in response to EMG's Second Amended Complaint for Patent Infringement. Except as expressly admitted herein, EMG generally denies all allegations in Zagat's Counterclaims. EMG expressly denies that Zagat is entitled to any relief whatsoever in connection with its Counterclaims, including, but not limited to, all relief requested in the Prayer for Relief in Zagat's Counterclaims.

1. Responsive to Counterclaim Paragraph 1, EMG admits the allegations.
2. Responsive to Counterclaim Paragraph 2, EMG admits the allegations.
3. Responsive to Counterclaim Paragraph 3, EMG admits the allegations.
4. Responsive to Counterclaim Paragraph 4, EMG admits the allegations.

COUNT I
DECLARATORY JUDGMENT OF
NONINFRINGEMENT OF THE '196 PATENT

5. Responsive to Counterclaim Paragraph 5, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-4 above as though fully set forth herein.

6. Responsive to Counterclaim Paragraph 6, EMG admits that an actual controversy currently exists between EMG and Zagat with respect to infringement by Zagat of the '196 patent.

7. Responsive to Counterclaim Paragraph 7, EMG denies the allegations.

8. Responsive to Counterclaim Paragraph 8, EMG denies the allegations.

9. Responsive to Counterclaim Paragraph 9, EMG denies the allegations.

COUNT II
DECLARATORY JUDGMENT OF
NONINFRINGEMENT OF THE '845 PATENT

10. Responsive to Counterclaim Paragraph 10, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-9 above as though fully set forth herein.

11. Responsive to Counterclaim Paragraph 11, EMG admits that an actual controversy currently exists between EMG and Zagat with respect to infringement by Zagat of the '845 patent.

12. Responsive to Counterclaim Paragraph 12, EMG denies the allegations.

13. Responsive to Counterclaim Paragraph 13, EMG denies the allegations.

14. Responsive to Counterclaim Paragraph 14, EMG denies the allegations.

COUNT III
DECLARATORY JUDGMENT OF
INVALIDITY OF THE '196 PATENT

15. Responsive to Counterclaim Paragraph 15, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-14 above as though fully set forth herein.

16. Responsive to Counterclaim Paragraph 16, EMG admits that an actual controversy currently exists between EMG and Zagat with respect to the validity of the '196 patent.

17. Responsive to Counterclaim Paragraph 17, EMG denies the allegations.

**COUNT IV
DECLARATORY JUDGMENT OF
INVALIDITY OF THE '845 PATENT**

18. Responsive to Counterclaim Paragraph 18, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-17 above as though fully set forth herein.

19. Responsive to Counterclaim Paragraph 19, EMG admits that an actual controversy currently exists between EMG and Zagat with respect to the validity of the '845 patent.

20. Responsive to Counterclaim Paragraph 20, EMG denies the allegations.

INCORPORATION OF RESPONSES TO CO-DEFENDANTS' COUNTERCLAIMS

Responsive to Zagat's incorporation by reference of the counterclaims set forth in the Answers and Counterclaims of all other defendants in the EMG Technology, LLC v. Microsoft Corporation et al. and the EMG Technology, LLC v. Apple Inc. et al. actions, EMG hereby incorporates by reference its corresponding responses from its Answers to the allegations contained in each of those respective Counterclaims as though fully set forth herein.

EMG'S AFFIRMATIVE DEFENSES TO ZAGAT'S COUNTERCLAIMS

EMG asserts the following affirmative defenses to Zagat's Counterclaims:

First Affirmative Defense (Failure to State a Claim)

21. The Counterclaims fail to state a claim upon which relief may be granted against EMG.

Second Affirmative Defense (Laches)

22. The claims asserted in the Counterclaims are barred by the doctrine of laches.

Third Affirmative Defense (Waiver)

23. The claims asserted in the Counterclaims are barred by the doctrine of waiver.

Fourth Affirmative Defense (Estoppel)

24. The claims asserted in the Counterclaims are barred by the doctrine of estoppel.

25. EMG reserves the rights to assert any other defenses to Zagat's Counterclaims that discovery may reveal.

PRAYER FOR RELIEF

WHEREFORE, EMG prays that this Court enter judgment against Zagat on Zagat's Counterclaims as follows:

(a) Dismissing Zagat's Counterclaims with prejudice and ordering that Zagat is entitled to no recovery whatsoever on its Counterclaims, including without limitation all relief sought in Zagat's Prayer for Relief in its Counterclaims;

(b) Ordering that this is an exceptional case, pursuant to 35 U.S.C. § 285, and awarding EMG its attorney fees and full costs of suit; and

(c) Awarding EMG such other and further relief as this Court deems just and appropriate.

JURY DEMAND

EMG demands a jury trial on all issues so triable.

DATED: October 15, 2010

Respectfully submitted,

OF COUNSEL:

Robert D. Becker
(Cal. Bar No. 160648)
Shawn G. Hansen
(Cal. Bar No. 197033)
MANATT, PHELPS & PHILLIPS, LLP
1001 Page Mill Road, Building 2
Palo Alto, CA 94304
Telephone: (650) 812-1300
Facsimile: (650) 213-0260
E-mail: rbecker@manatt.com
E-mail: shansen@manatt.com

Stanley M. Gibson
(Cal. Bar No. 162329)
Joshua S. Hodas, Ph.D.
(Cal. Bar No. 250802)
JEFFER MANGELS BUTLER AND
MITCHELL, LLP
1900 Avenue of the Stars, Seventh Floor
Los Angeles, CA 90067
Telephone: (310) 203-8080
Facsimile: (310) 203-0567
E-mail: smg@jmbm.com
E-mail: jsh@jmbm.com

By: /s/ Charles Ainsworth

Charles Ainsworth
State Bar No. 00783521
Robert Christopher Bunt
State Bar No. 00787165
PARKER, BUNT & AINSWORTH, P.C.
100 E. Ferguson, Suite 1114
Tyler, TX 75702
903/531-3535
903/533-9687
E-mail: charley@pbatyler.com
E-mail: rcbunt@pbatyler.com

**ATTORNEYS FOR
PLAINTIFF EMG TECHNOLOGY,
LLC**

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service are being served this 15th day of October, 2010, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Charles Ainsworth
CHARLES AINSWORTH